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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X	
CONSIST SOFTWARE SOLUTIONS, INC.,	:
f/k/a CONSIST INTERNATIONAL, INC.,	:
	:
	:
Plaintiff,	:
	:
-against-	:
	:
SOFTWARE AG, INC. and SOFTWARE AG,	:
	:
Defendants.	:
-----X	

07 CV 7047 (CM) (FM)

**PLAINTIFF'S REPLY  
 TO DEFENDANTS'  
 COUNTERCLAIMS**

Plaintiff Consist Software Solutions, Inc. f/k/a Consist International, Inc. ("Consist"), by and through its attorneys, Duane Morris LLP, as and for its reply to the counterclaims asserted in the Answer and Counterclaims of defendants Software AG, Inc. f/k/a Software AG Americas, Inc. and Software AG (collectively "Defendants") dated September 21, 2007, states as follows:

**AS TO DEFENDANTS' FACTS COMMON TO ALL COUNTERCLAIMS**

1. Consist admits, upon information and belief, the allegations contained in paragraph 129 of the Answer and Counterclaims.
2. Consist admits the allegations contained in paragraph 130 of the Answer and Counterclaims.
3. Consist admits, upon information and belief, the allegations contained in paragraph 131 of the Answer and Counterclaims.

4. Consist denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 132 of the Answer and Counterclaims, and therefore denies the same. The second sentence of paragraph 132 of the Answer and Counterclaims purports to state a legal conclusion and no response thereto is required.

5. Paragraph 133 of the Answer and Counterclaims purports to state a legal conclusion and no response thereto is required.

**AS TO DEFENDANTS' FIRST COUNTERCLAIM**  
**(BREACH OF CONTRACT)**

6. Consist admits the allegations contained in paragraph 134 of the Answer and Counterclaims.

7. Consist denies the allegations contained in paragraph 135 of the Answer and Counterclaims.

8. Consist denies the allegations contained in paragraph 136 of the Answer and Counterclaims.

9. Consist denies the allegations contained in paragraph 137 of the Answer and Counterclaims.

10. Consist denies the allegations contained in paragraph 138 of the Answer and Counterclaims.

11. Consist denies the allegations contained in paragraph 139 of the Answer and Counterclaims.

12. Consist denies the allegations contained in paragraph 140 of the Answer and Counterclaims.

13. Consist denies the allegations contained in paragraph 141 of the Answer and

Counterclaims.

14. Consist denies the allegations contained in paragraph 142 of the Answer and

Counterclaims.

15. Consist denies the allegations contained in paragraph 143 of the Answer and

Counterclaims.

**AS TO DEFENDANTS' SECOND COUNTERCLAIM**  
**(DECLARATORY JUDGMENT – TERMINATION AT END OF TERM)**

16. With respect to paragraph 144, Consist repeats and realleges its responses to the allegations of paragraphs 129 through 143 of the Answer and Counterclaims as if fully set forth herein.

17. Consist denies the allegations contained in paragraph 145 of the Answer and Counterclaims, and refers to the Agreement for a true and complete statement of its terms and conditions.

18. Consist denies the allegations contained in paragraph 146 of the Answer and Counterclaims.

19. Consist denies the allegations contained in paragraph 147 of the Answer and Counterclaims.

20. Consist admits the allegations contained in paragraph 148 of the Answer and Counterclaims.

21. Consist admits the allegations contained in paragraph 149 of the Answer and Counterclaims.

22. Consist denies the allegations contained in paragraph 150 of the Answer and Counterclaims.

**AS TO DEFENDANTS' THIRD COUNTERCLAIM**  
**(DECLARATORY JUDGMENT – TERMINATION FOR CAUSE)**

23. With respect to paragraph 151, Consist repeats and realleges its responses to the allegations of paragraphs 129 through 150 of the Answer and Counterclaims as if fully set forth herein.

24. Consist denies the allegations contained in paragraph 152 of the Answer and Counterclaims.

25. Consist denies the allegations contained in paragraph 153 of the Answer and Counterclaims.

26. Consist denies the allegations contained in paragraph 154 of the Answer and Counterclaims, and avers that there were no material breaches of the Agreement.

27. Consist denies the allegations contained in paragraph 155 of the Answer and Counterclaims.

28. Consist admits the allegations contained in paragraph 156 of the Answer and Counterclaims.

29. Consist admits the allegations contained in paragraph 157 of the Answer and Counterclaims.

30. Consist denies the allegations contained in paragraph 158 of the Answer and Counterclaims.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

31. Defendants' counterclaims fail, in whole or in part, to state claims upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

32. Defendants' counterclaims are barred, in whole or in part, by the doctrine of

unclean hands.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

33. Defendants' counterclaims are barred, in whole or in part, by the doctrine of laches and by any relevant statutes of limitations.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

34. Defendants' counterclaims are barred, in whole or in part, by the doctrines of waiver, laches and estoppel.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

35. Defendants' counterclaims are barred, in whole or in part, by the doctrines of ratification, release, and accord and satisfaction.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

36. Defendants' counterclaims are barred, in whole or in part, by Defendants' failure to mitigate any alleged damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

37. Defendants' counterclaims are barred, in whole or in part, by Defendants' prior breaches of the Agreement.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

38. Defendants' counterclaims are barred, in whole or in part, by Defendants' failure to perform as required by the Agreement.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

39. Defendants' counterclaims are barred, in whole or in part, by Defendants' conduct as alleged in the Complaint, which is incorporated herein by reference.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

40. Defendants' counterclaims are barred or reduced, in whole or in part, to the extent that any recovery by Defendants on the counterclaims must be reduced and offset by amounts that Consist is owed by Defendants as a result of Defendants' conduct as alleged in the Complaint, which is incorporated herein by reference.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

41. Defendants' counterclaims are barred, in whole or in part, because there is no causal relationship between any acts or conduct of Consist and any losses allegedly suffered by Defendants.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

42. Defendants' counterclaims are barred, in whole or in part, because Defendants failed to give proper and adequate notice under the Agreement, by proper means, and because any such notices, even if appropriate, lack basis in fact.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment dismissing the counterclaims of Defendants with prejudice and granting such other and further relief as the Court deems just and proper, including but not limited to an award of attorneys' fees and the costs and disbursements of this action.

Dated: New York, New York  
October 15, 2007

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